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Remarks

Reconsideration of the above-captioned application is respectfully requested. All pending independent claims (1, 11, 17, 20, and 24) have been rejected as being anticipated by Park, Figure 1 and accompanying text from col. 1, line 31 to col. 2, line 6. Dependent claims 2-6, 8, 12-15, 18-22, and 25 have been rejected under this section. Also, dependent claims 7 and 26 have been rejected as being obvious over Park in view of Monroe, dependent claims 9 and 16 have been rejected as being obvious over Park in view of Kawamura, dependent claims 10, 23, and 27 have been rejected as being obvious over Park in view of West, dependent claim 28 has been rejected as being obvious over Park in view of Ogura, and dependent claim 29 has been rejected as being obvious over Park in view of Lemelson.

To overcome the rejections, independent Claim 20 has been amended to recite subject matter formerly set forth in Claim 21, namely, that the processor determines a gain adjust signal based at least partially on: a distance from a person's mouth to a microphone as determined from the video camera signals, or an orientation of a person's head relative to the microphone as determined from the video camera signals. Also, independent Claim 24 now recites that the position signals represent at least one of: the distance between a person and the microphone, the angle between the head of a person and the microphone, and a head location relative to a direction of sensitivity of the microphone as disclosed on page 8, first full paragraph of the specification. Claims 1-19 and 21-29 remain pending.

Rejections Under 35 U.S.C. §102

Claims 1-6, 8, 11-15, 17-22, 24, and 25 have been rejected under 35 U.S.C. §102 as being anticipated by Park, Figure 1 and column 1, line 31 through col. 2, line 6. The relied-upon section of Park

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teaches adjusting the audio output of a camcorder based on the position of the zoom lens in the camera. In contrast, Claim 1 requires determining a gain adjust signal based at least in part on a person-microphone position signal to establish the audio output level.

Park thus does not use a person-microphone signal, but rather a lens position signal to establish audio output. What is important is that the lens position may not even be tangentially related to the distance between the person and the microphone, since the operator can always manually adjust the focus of the camera by moving the lens (and, hence, establishing the signal used by Park) independently of distance to the subject. Consequently, the lens position signal of Park cannot be the claimed person-microphone position signal because it does not necessarily bear any relation to the distance between the person and microphone, see MPEP §2112 (to be inherent, a reference must *necessarily* function as advanced by the examiner).

The remaining independent claims have been rejected under the above rationale but not separately analyzed, instead receiving rather short shrift as being "essentially similar" to Claim 1. Not so fast. Consider Claim 11, which requires, among other things, deriving person-microphone position signals using the video stream. The lens position signal of Park does not remotely approach being a video stream. In the event that examiner is attempting to equate a mechanical lens position with a video stream under the guise of broad claim interpretation during prosecution, he must show that the skilled artisan would regard a lens position as being broadly equivalent to a video stream, see MPEP §2111.01.

Likewise, independent Claim 17 has been inappropriately swept under the rug of Claim 1 with the explanation that the camcorder of Park generates video signals that are representative of light reflected. It is true but irrelevant that Park generates video signals: the video signals of Park are not used to establish an audio gain, only the mechanical position of the lens is so used. Because Claim 17 requires generating an

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audio gain adjust signal based on an orientation signal that in turn is based on light reflection signals, it is neither anticipated nor suggested by Park.

Rejections Under 35 U.S.C. §103

Claims 7 and 26 have been rejected under 35 U.S.C. §103 as being unpatentable over Park in view of Monroe, dependent claims 9 and 16 have been rejected as being obvious over Park in view of Kawamura, dependent claims 10, 23, and 27 have been rejected as being obvious over Park in view of West, dependent claim 28 has been rejected as being obvious over Park in view of Ogura, and dependent claim 29 has been rejected as being obvious over Park in view of Lemelson.

For the reasons above which apply to the independent claims, these dependent are patentable. Moreover, the rejections fail to properly establish a *prima facie* case of obviousness for the following reasons. There is no fair prior art suggestion to combine the camcorder of Park with the aircraft surveillance system of Monroe, as is otherwise required by MPEP §2143. The proffered suggestion - that the skilled artisan would want to graft the laser range finder of Monroe onto the camcorder of Park to permit accurate zooming of the camcorder - finds absolutely no support in the prior art. Nowhere does Park suggest that accurate zooming is a problem, much less that a laser range finder might be used. Park is instead directed to smooth audio gain adjust transitions. Monroe uses its laser range finder for a problem - surveillance - that bears no relevance to the problems which Park addresses. While every patent including Monroe extols its individual virtues, what is required in properly establishing a *prima facie* case of obviousness is producing actual evidence from the prior art or the general knowledge of the art to *combine* two references into one device, In re Dembiczak, 175 F.3D 994, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999) (the range of sources available does

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not diminish the requirement for **actual evidence**, and "broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence").

Claim 9 requires the gain adjust signal to be determined after the person has been recorded, with Kawamura added to Park to arrive at this limitation. The problem here is a bit different than the preceding error noted above. Why would or, for that matter, how could Park be modified to determine the gain adjust signal after video recording, when Park uses a signal - the lens position - that of necessity is simultaneous with video recording? The proposed addition of Kawamura's principle to Park would ruin Park, since after video recording the relevant lens position is changed and, hence, lost for Park's purposes. The rejection thus runs afoul of MPEP §2143.01 (discussing In re Gordon and In re Ratti).

Claim 10, which requires a fast response gain adjust signal and a slow response gain adjust signal that is based on an audio stream, has been rejected as being unpatentable over the proposed combination of Park and West, a reference not directed to camcorders but rather to DSPs. Once again, since Park does not use DSPs and since West does not relate to video at all, there is no reason to combine the references. Once again, the preferred suggestion to combine in the Office Action, whatever its merits, fails to lack the requisite prior art support, condemning the *prima facie* case. Further, the equating of the signal in Park as a "fast response" signal and that of West as "slow response signal" is improper, because it comes from the imagination of the examiner and not from the prior art. All the relied-upon section of West states is that AGC is useful over a range of varying amplitudes, not that it envisions a slow response signal.

The proposed combinations of Park with Ogura and Lemelson et al. likewise have no prior art support.

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The Examiner is cordially invited to telephone the undersigned at (619) 338-8075 for any reason which would advance the instant application to allowance.

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